REPORT

OF THE

TRIAL

OF THE

KING

VERSUS

HURDY GURDY,

Alias BARREL ORGAN, alias GRINDER, alias the SEDITIOUS ORGAN, for publishing and causing and procuring to be published a certain false, wicked, malicious and scandalous noise, clamour sound, uproar, vibration, cussion, concussion, percussion or repercussion of the Air, which came on to be tried at the Bar of the King's Bench on the ——— day of ——— 1794, with the Arguments of Council and the Charge of the Judge, taken in Short-hand.

DUBLIN:
PRINTED IN THE YEAR, 1794.

BRITISH MUSEUM

THE

KING, *verſus* HURDY GURDY.

ON ——day of ——, this cauſe came on to be tried at the bar of the court of King's-Bench in —— by a ſpecial jury of the County of ——.

A queſtion was put to one of the jurors, whether he had ever given an opinion? and prevented by the Court. Several challenges to the poll were alſo made; and Hugh Right, of Integrity-hall, having been objected to by the Crown, the following gentleman were ſworn on the jury:

1. Whig Tallyho Turncoat, of Glorious Memory, Eſq.
2. Hercules Saracen, of Mount Changeable, Eſq.
3. J. Solomon Gothn, of Crankey-Caſtle, Eſq.
4. Rivers Weathercock, of Windmill-hill, Eſq.
5. Nadir Sha, of Narrow-rock, Eſq.
6. Croucher Toryman, of Sly-mount, Eſq.
7. Tyrant Caliban, of Fleeced-Iſland, Eſq.
8. J. Steward, of Bantam, Eſq.
9. Tremble Cautious Panic, of Beauvoir, Eſq.

10. Figaro Farintoſh, of Soaker's-hall, Eſq.
11. Guzzle Tunbelly, of Shoulder-dale, Eſq.
12. Wiley Manydouble, of Caſtle-town, Eſq.

Mr. Attorney General opened the caſe, by ſtating that it was his *peculiar ſtudy* to explain the nature of the crime charged upon the defendant *Hurdy Gurdy*, and of the evidence which would be laid before them to ſupport the charge. He deſcanted at great length upon his own abilities and integrity: which he ſaid was neceſſary, that it might appear to the world that proſecutions of this public nature were inſtituted for none but the honeſteſt purpoſes, and carried into effect by none but the moſt diſcreet and incorruptible agents. He ſaid he was *the officer of the people*, as well as of the *crown*—that this was the proſecution of the people; and if the higheſt authority was to deſire him to do a diſhoneſt thing, and offer him a penſion or a title for doing ſo, it never need be aſked of him a ſecond time: And in ſuch caſe he ſhould care as little for the cenſure of the rabble as for their applauſe. This, he ſaid, was the moſt flagitious and blaſphemous attack upon our excellent conſtitution in church and ſtate, which he ever had had the misfortune to encounter; that conſtitution which has for ſo many centuries ſecured the happineſs and proſperity of *his Majeſty's ſubjects*, and which he hoped would, by the bleſſings of Providence, continue to ſecure them in this world and the next. The indictment ſtates—

"That *Hurdy Gurdy*, alias *Barrel Organ*, alias *Grinder*, alias *The Seditious Organ*, being of a wicked, malicious, ſeditious and turbulent diſpoſition, and greatly diſaffected to our ſovereign lord the king, and his government of

this

this kingdom, and wickedly and maliciouſly intending and deviſing to ſtir up diſcontents and tumults among his majeſty's ſubjects, and to excite them to outrage and rebellion againſt our ſaid lord the king, and to anarchy and confuſion, and to bring our ſaid lord the king into great contempt, ridicule, ſcandal, infamy and diſgrace amongſt the ſubjects of our ſaid lord the king, and to create and diffuſe diſcord throughout the kindom, and to deſtroy the harmony ſubſiſting amongſt his majeſty's ſubjects, and to incite them by an armed force to deſtroy the conſtitution of this kingdom, and to overawe the legiſlature, did, in the ——— year of our ſaid preſent ſovereign lord George the Third, by the grace of God of Great Britain, France, Ireland, and *Corſica*, king, defender of the faith, and ſo forth, with force and arms at ———, ——— to wit, in the pariſh and ward of St. Michael the archangel, and in the county of the ſaid city, did publiſh, and cauſe and procure to be publiſhed, a certain falſe, wicked, malicious and ſcandalous noiſe, clamour, ſound, uproar, vibration, eſcillation, cuſſion, concuſſion, percuſſion, or repercuſſion of the air, or ærial pulſe, known by the name and addition of *Ca Ira*; (Anglice. that will go, meaning thereby, that the conſtitution of this kingdom in church and ſtate, *will go*) touching the government, ſtate and conſtitution of this kingdom, according to the treble tenor and baſe following:

In the copy we have received of this very curious trial, the muſical notes which conſtitute the air "*CA IRA*," are here ſet forth: Two reaſons prevent our laying them before our readers—

one,

one, leaſt we ſhould be chargeable with inſidiouſly propagating the very thing which it was intended ſhould be ſuppreſſed, which has happened in all the late trials of this kind—the other was, that we had not a plate ready for this publication.

In contempt of our ſaid Lord the king, in open violation of the laws of this Kingdom; to the evil and pernicious example of others in like cauſe offending, and againſt the peace of our ſaid Lord the king, his crown and dignity.

Gentlemen this is a very long information, conſiſting of ninety-three counts; ſome of them go as to the words, that is, ſetting out the ſeditious words, in hæc verba Anglicana, viz. "*Ah! ha! Ca Ira! Ca Ira!*" which it is painful to me to repeat, much more to ſing: others go as to the tenor, others to the tenor and baſe, others to the tenor and effect, others to the baſe merely—and others again as to the treble: Some again are for playing others for publiſhing, others for cauſing to be publiſhed, others for cauſing to be played: Some are for playing a tune, others a rondeau, others a ſymphony, others a country-dance; others again count upon a ſong: Theſe again vary, and are multiplied by embracing every circumſtance of *time, &c.*

Gentlemen, it is impoſſible for me to explain why it is neceſſary to deſcribe this offence in ſo many different counts or tales. Public convenience requires that the proceedings in our criminal law ſhould not be eaſily underſtood—the ſanction of antiquity ratifies it; and I truſt in God, decency

and

and decorum will always prevail ſo far, as to prevent that unhallowed ſpirit of frantic innovation, which has deſolated the fineſt kingdom of the known world, and precipated a virtuous monarch from his throne to make way—for whom? for Gog for Magog, and for Demagogue!!! You will be inſtructed by the court, at a proper ſtage of the cauſe, to what counts the evidence in point of law does apply; and you I am ſure, will find your verdict accordingly.

Mr. Attorney General then obſerved, that in an action of treſpaſs, where a jury find guilty, they are allowed to acquit their conſciences, by ſaying how guilty; that is, how much damages the party ſhall pay—but that this was an indulgence not allowed where the king was a party, and in a trial for a miſdemeanour, a jury are only to ſay guilty; but whether deſerving of a week's impriſonment or tranſportation for life, the Court are to judge, that probably being conſidered as matter of law. Therefore, when I ſtate the circumſtances which go in aggravation, it is to the Court I addreſs myſelf; altho' I ſtand with my face to you, and preface my ſentences with '*Gentlemen of the Jury*;' and I ſhall ſhew the Court that this offence contains every thing which was ever relied upon as an aggravation of a libel, in its own monſtrous and capacious womb.

1ſt. The tendency to promote far and wide the principles of anarchy and fanaticiſm; for there is not a ſtreet nor lane where it has not been heard; nor a ſhoe-boy who does not whiſtle it as he poliſhes your boots; nor a newſman who does not introduce it as a ſymphony, to fill up the intervals between '*Bloody News*!' and

Chronicle

2d. It affects to throw ridicule upon all order and eſtabliſhment, whether human or divine.

3d. It is calculated to endure and not to be forgot in our generation, nor in many ſucceeding ones; and this very trial will give it freſh currency in the mouths of men—it will deſcend to our poſterity, and will be entailed like a curſe upon our children, and our children's children.

4th. I will mention its tendency to excite ſedition: Gentlemen, there is ſedition in the *ſound*, and a libel in every *note* of it; and *thoſe* wicked fanatics well knew, that there was no way in this refined age, ſo effectual to promote their diabolical purpoſes, and to work upon the feelings and paſſions of men, as by calling in the aſſiſtance of the fineſt of the fine arts. (Here Mr. Attorney General adverted to the hiſtory of Orpheus's lyre, upon which he amplified and enlarged a great deal.)

5th. The truth of this libel, notwithſtanding all the ſenſeleſs and vulgar clamour raiſed againſt that doctrine, a very high aggravation. The firſt word *ca*, is a French pronoun equivalent to the Engliſh pronoun *that*;—and *ira* is the third perſon of the future tenſe, of the indicative mood, of an irregular verb, and means *will go*—taken together, it is—*that will go*, it is an inſinuation, which beyond meaſure ſwells the enormity of the crime.

6th. Gentlemen, let me call to your recollection the

the times in which this publication took place, painful as it muſt be to your feelings and diſtreſſing as it is to mine. Let me remind you of that period, and an awful period it was, when the combined force of the moſt powerful monarchs of Europe, was unable to ſtem the torrent of fanaticiſm iſſuing out of that execrable Pandeminoum which once was France; when the ſovereign pontiff of the world, and God's vicegerent upon earth, was obliged to entruſt his perſonal ſafety to a ſcanty guard of Britiſh *Proteſtants*; when he was reduced to the neceſſity of faſting, not one or two, gentlemen of the jury, but for three entire days; when the king of Sardinia, notwithſtanding that he received yearly, of Good and lawful money of Great Britain, 200,000l. and was furniſhed with a powerful fleet in the Mediterranean, by that ſame generous nation, has nevertheleſs been hunted like a Weſt-phalian boar from his own native foreſts, has been ſtript of moſt of his dominions in Italy and Sardinia. and now exhibits a melancholy inſtance of the downfall of royalty, and the inſtability of thrones; when the inaugurated Emperor of Germany, and the mighty king of the Romans was obliged to fly from the bloody honors of the field, to ſurpriſe his auguſt conſort in her ſecond ſleep, who has conſoled him, it muſt be admitted, by the precious gift of a darling little baby, in whoſe ſmiles he may find that comfort which his military talents have not been able to acquire; when the great and illuſtrious king of Pruſſia, inſtead of bringing 62,000 men into the field, contented himſelf with diſplaying to the dazzled optics of the aſtoniſhed Cornwallis, that ſtandard on which is blazoned the wonderous

glories of the ſpread eagle, for which having received *only* 600,000l. and not ſure of any more, he has turned his thoughts to a better world, and is determined with the virtuous Czarina, to promote the cauſe of religion and juſtice in Poland, ſeeing it is deſperate in France. It is notorious, gentlemen of the jury, that the king of the Two Sicilies is in a predicament little more to be envied--witneſs the barbarous Neapolitan tumults, which every man of common humanity muſt ſhudder at the relation of it; witneſs that Jacobin and fanatic Mountain, Veſuvius, to whoſe turbulence, the cardinal archbiſhop has in vain oppoſed the holy head of St. Januarius. His catholic majeſty, gentlemen, has in vain invoked every tutelar ſaint in heaven, and every relick upon earth--the inquiſition itſelf, has been reſorted to in vain; threathed by domeſtic inſurrections, and overpowered by external loſſes, 7000 of his beſt troops laying down their arms in one day; and ſince that, in the ſhort ſpace of three weeks, having loſt 12,000 more, with ſome hundred pieces of artillery. His only conſolation is in comparing his hard fortune with that of the adventurous knight Don Quixote, in his diſaſtrous encounter with the wind-mill. Melancholy as is this picture of the kings of Europe, I have, you ſee, gentlemen, been able to unfold it with ſome degree of temper. But how ſhall I ſpeak, of what I truſt in God, you, like all good ſubjects who are ſenſible of the bleſſings of our happy conſtitution in church and ſtate, abhor and execrate? How ſhall I ſpeak of *Republics*, a word, which almoſt ſuffocates me as I utter it, and if nothing but the gratification I feel in railing at thoſe monſtrous inventions, of the wildeſt anarchy, could tempt

me to pronounce? What then is the caſe? Have not the deluded and miſguided Americans ſent over a perſon of the name of John Jay, to demand payment for their corn, and the reſtitution of their poſts: And the two frigates which our allies the Dutch have furniſhed us with, have both been taken! But the heavieſt and moſt inſupportable of all our loſſes, and that, which whilſt I have a tear to ſhed, or an eye in my head, I ſhall never ceaſe to deplore, is the death of the magnanimous LION OF OLD ENGLAND! whoſe virtues and whoſe unconquerable ſpirit, have ſunk together into an untimely grave, dug for him by the deep and undermining arts of factious fanatics.

(Here Mr. Attorney General's utterance was, for a while interrupted by tears and ſobs, which did not fail to call forth the ſympathy of his audience, as his unfeigned grief muſt do that of the pious reader.)

I ſhall dwell lightly (ſaid he, recovering himſelf) for reaſons ſufficiently obvious, upon the detail of diſaſtrous defeats, of diſgraceful loſſes which we have ſuſtained abroad; I ſhall paſs by the rude intruſion upon the *royal* horſe races of our excellent prince, by one Pichegru, a renegado prieſt, who ſhould at leaſt have reſpected his *holy office*; or the rout and overthrow of the great Prince of Cobourg, by one Jourdain, an atheiſtical haberdaſher; the fugitation of Clairfayt; and the cold and hunger of Ld. Moira, who had not a tent to lie under, and wanted 30, 000 rations of bread, at a time when the fanatics ſtunk ſo of brandy, that he was unable to approach them. I paſs over the melancholy cataſtrophes of Toloun, Dunkirk, Valenciennes, Conde, Queſnoy, Ghent,

Bruges, Oſtend, Landau, Bruſſels, Ypres, Charleroi, La Vendee, Lyons, Nice, Piedmont, Straſbourg, Haguenau, Maubege, Hondſcoote and Keyſers Lautern; I haſtily paſs over the Rhine, the Scheldt the Pyrenees, and the Alps, and come at once to thoſe bloody tragedies, which have been acted nearer home; I ſpeak of a dozen pikes, ſave one, which were manufactured in the town of Edinburgh; I ſpeak alſo of a fanatic, who was lately apprehended by a *noble* commander, in the very act of planting the tree of liberty in a *well-known ſeditious town*—and who afterwards turned out, ſuch is the power of diabolical machination, to be no more than a poor, itinerant equilibriſt, who gained a precarious livelihood by ballancing a pole upon his chin; but who together with his pole, are now ſafely lodged on board his Majeſty's tender—whence I truſt, gentlemen of the jury, their wicked art will not be able to releaſe them—and by which ſpirited and timely exertion of the noble colonel, the well diſpoſed inhabitants of that place, may now ſleep ſecurely in their beds; I ſpeak alſo of the *Saltpetre Plot*, by which theſe inflammatory libellers, leaguing with the Jacobin mountain I have before mentioned to you, have, as it were, by the irruption of a volcano, or the ſhock of an earthquake, blown up the Eaſt India Company! and deſtroyed 35,000 bags of that precious foſſil, *ſaltpetre*, by whoſe virtues alone, it is that the principles of true religion and good government are attempted to be maintained and propagated; and a ſimilar exploſion is hourly expected in the Royal Tower—Thus it is curious to obſerve religion exploded in this country, at the ſame moment that they are *inſidiouſly* acknowledging God in France. All that a wiſe adminiſtration can do, has been to check this miſchief,

to which I truſt in God, the *good ſenſe* of juries, will always be aſſiſting: the Tower has been fortified, numberleſs proſecutions have been inſtituted, as yet, however, with no better effect than to make the viper bite againſt the file; many good books have been written, particularly one by an ingenious gentleman of the profeſſion I have the honour to be ſo diſtinguiſhed in, it is entitled—*Rights of Juries, legal and conſtitutional, in caſes of libel*—and is meant as an antidote to Fox's Jacobin bill, and the miſchievous expoſition of it by an Erſkine in one country, and a Curran in another.—In which books, Juries, amongſt many other excellent things, are told that they are not to *judge* by the ſtandard of *their own judgment*, their conſcience, their feelings, &c. nor by the honeſty nor the wickedneſs of the defendant's intentions: but, on the contrary, they are to hear with the law's ear, ſee with the law's eye, and ſpeak with the law's voice; of which law the Court are alone to judge. In ſhort, gentlemen, this is ſo an admirable a work, that if you once heartily adopt its principles, you will have no more to do than to find every perſon guilty whom the Court tells you is ſo, and I hope in a ſhort time that your attendance will be diſpenſed with, and that ſigning your names to the verdict, or appointing an attorney to do it as your *good ſenſe* ſhall direct you, will be quite ſufficient, which will ſave a world of uſeleſs expence, trouble and delay. But to return to the times, and the wiſdom of miniſters—ſoldiers have been multiplied at home, in much greater number than they have been ſlaughtered abroad. But, alas, gentlemen, it is a melancholy thing to ſee the miſerable objects to whom we are now obliged to reſort for protection and defence—hunchbacks and crooked legs, from the lanes and alleys—dole-

and

and beggars from the bridges and the hedges—old men and children ſcraped together from the hoſpitals and goals, by ſuch of our nobility and gentry as never ſerved their country on any other occaſion—but are now become crimps, kidnappers and ſwindlers, from the neceſſity of the times. You cannot be uninformed gentlemen, of the unfortunate German loan, ſecured by a mortgage upon Auſtrian Flanders—the title to which it has already been evicted. This, gentlemen, you will ſay, perhaps, is the moſt unkindeſt cut of all" for

"*Pleratur lachrymis amiſſa pecunia veris*"

Nor can you forget, gentlemen, that the greateſt naval victory ever obtained by the greateſt officer the world ever ſaw, has had no better effect than to let the enemy's rich convoy paſs ſecurely into their ports, and occaſion us to burn ours, and conſiderably to lower our ſtocks, already fallen low and low enough. The three eſtates of Great-Britain as well as of Corſica, have been found inſufficient for the emergency, and a fourth has been created by the name of Committee of Secrecy, or Secret Committee. Alas, gentlemen, theſe are no ſecrets, nor is it a ſecret that Mr. Pitt himſelf, when charged with Inſanity by a Jacobin member of the lower houſe—my tender eyes fill with tears and my honeſt heart ſwells with grief when I utter it—did beyond a poſſibility of doubt, confirm the charge. (Mr. Attorney General here repeated the arguments of Mr. Pitt, reſpecting extermination and deſtruction, and the reaſons he gave for continuing the war.) If you believe this, gentlemen of the jury, and alſo Col. Blaquire's aſſertion, that three fourths of the people of Ireland would join

arms

arms with the French, can you hesitate to say, that the *Hurdy Gurdy* who could in such a *time* as this play such a tune as this is, deserves to be made an example to all others in the like case offending?

It will be proved to you by one French horn, that this instrument has played this tune day after day, through the streets of this metropolis. It will be for your *good sense* to infer whether much, and very much of the calamity, for which the European world now goes in mourning, has not originated in these seditious, not to say treasonable, sounds, which it has so assiduously propagated, and with which, like the usurper of Denmark, it has poisoned the public ear—for, it is owing to the lenity of the laws, and the administration of them, that Hurdy Gurdy does not now stand at the bar of this Court, charged with the highest crime that a *Hurdy Gurdy* can be guilty of

Finally, then, I conjure you in the name of your God, and of your king—as you value the liberty of your country—as you are tender of the lives and spotless honours of your wives and of your daughters—as you study the peace of generations yet unborn—as you regard the sacred ties of your holy religion, wisely and justly established by the law—as you cherish the peaceful security of your firesides, to rise above the fear of every consequence, to be influenced by no terror of the giddy and contemptible rabble—but to stand forward boldly and honestly, to defend the constitution against *Hurdy Gurdy*; and by a firm and upright verdict, to check the career of fanatic delusion, set on by diabolical malignity, which if suffered to go one jot further, will burst the bounds of all legal and

social

ſocial reſtraint, and overwhelm the Britiſh empire, the glory of the world, in blood and deſolation, and envelope in worſe than Egyptian darkneſs, or Egyptian bondage, you and your poſterity for ever —will reverſe the happy order of all things—overturn every eſtabliſhment in every quarter of the globe—plant the tree of liberty in Muſcovy—fraternize with the Hottentots—enlighten the Muſſulmen—create Atheiſts in Ethiopia—Republicans in the Tartarean deſerts and—Municipalities in Patagonia!!!

[Here Mr. Attorney General declared, that he had never made ſo long a period in his life; and this he vowed to his God, was owing to the honeſty of his heart, and his regard for the poor deluded people.]

You will have hymns of liberty, gentlemen of the jury, chaunted over the burning ſuns of Africa, and thoſe wilds, which the foot of man never ventured to explore, will be parcelled out into diſtricts and departments, and the very tigers and lions which now range unmoleſted through them, will be fraternized and turned into firſt and ſecond requiſition.

I will call upon you then, by every thing ſacred and prophane which is dear to man, by a manly verdict to teach theſe abominable, ambitious, atheiſtical, atrocious, anarchical, barbarous, brawling, babbling, brainleſs, blaſphemous, cruel, conſpiring, contemptible, curſed, confounded, damnable, dangerous, deſtructive, diabolical, deiſtical, demagogical, execrable, egregious, extravagant, excommunicated, fanatic, fanatical, furious, factious, fanatical, (I believe I ſaid that

word

word before. Well) ferocious, FRENCHI**** (Here Mr. Attorney General, overcome by his feelings, grew confuſed, and was obliged to ſit down.)

French Horn examined by Mr.———.

Q. What is your name?

Anſ. '*French Horn.*'

Ch. J. Do you mean that you are a horn of France; or that your name is French Horn? or do you mean merely to ſay you are of French extraction? I put it to you in other words—Are you a horn of France, or is your name French Horn?

Mr. P—S——Now my la'd, now my la'd, now my la'd. It is not my intention—it is not my intention—it is not my intention to cavil at any thing which may fall from the Court—which may fall from the Court—But the alien bill—under that bill, my la'd—under that bill, my la'd, this witneſs would be ſubjected—this witneſs would be ſubjected to loſs of liberty—of liberty, and my la'd, our laws are very jealous of liberty—he might be deprived of the benefit of habeas corpus, my la'd and of magna charta....*Per curiam.*: This is not within the reaſon of caſes, where a witneſs's anſwer in one alternative, muſt neceſſary criminate himſelf. This is no more than a diſcretion in the hands of certain of his majeſty's ſubjects; but being an alien is not made a poſitive crime: However, I think the witneſs ſhould get ſome aſſurance.

The witneſs then anſwered by playing a few bars of '*My native land I bade adieu*' and alſo '*Titty fol lol,*' '*I am a French gentlemen, lately come from France,* '*Me pick up von Engliſh lady, ſhe ſhew me*

von Engliſh dance.'

Q. Do you know the traverſer Hurdy Gurdy?

Anſ. '*Oh yes! Oh yes! the crier ſaid, and jumped acroſs the table.*'

Q. Have you known him long?

A. '*In infancy our hopes and fears.*'

Q. Where did you firſt know him?

A. '*Over the hills and far away.*'

Q. Have you ever heard him play in the ſtreets?

A. '*Full many a time and oft, have we together ſtrayed.*'

Q. Where?

A. '*Up and down, thro' this gay town.*'

Q. At what time?

A. '*Patrick's day,*' and '*On the morn of ſweet May day,*' and '*Laſt Valentine's day.*'

Q. What did he play?

A. '*Go, George, I can't endure you.*'

Q. What elſe?

A. '*The modes of the Court.*'

Q. Do you remember to have heard him play on any other day in particular?

A. '*July the firſt*' and '*Merry be the firſt of Auguſt.*'

Q. What tune did he play on the firſt of Auguſt?

A. '*The Duke of York's march,*' '*The Coldſtream march,*' '*The Retreat*'—'*Over the water.*'

Q. Did he play nothing elſe?

A. '*Let the King do all he can, he is no more than man.*'

Q. Did he play nothing elſe?

A. '*The Volunteer's March.*'

Q. Can you recollect no other?

A. '*The White Cockade.*'

Q. Was there no other?

A. '*Rouſe Hibernia,*' '*Rouſe from your trances,*' and '*A whack of Shillelagh.*'

Q. If I am inſtructed rightly, Sir, you muſt

 have

have heard him play ſome other—did you not hear him play .....

(Interrupted by defendant's counſel, who objected to this as being a leading queſtion.)

A. '*Proteſtant boys*,' and '*Follow my own Kagary*.'

Q. Was there no other?

A. CA IRA ! ! !

Mr.——. My la'd my la'd I have done.

Croſs-examined by defendant's counſel.

Q. Did you never hear this defendant play any very loyal tunes?

A. '*God Save Great George our King*.'

Q. Any other?

A. '*Rule Britannia*,' '*Sovereign of the Sea*,' and '*Hearts of Oak*.'

Q. You have already intimated, Sir, that you had known this Organ, or Grinder, or Hurdy Gurdy from your infancy, and being uſed to accompany him: Pray Sir, how came you to part with him?

A. '*For lack of gold*.'

Q. Then it was for want of money merely, and not from any ſenſe of duty or of virtue, that you betrayed your aſſociate, and became an approver?

A. '*With gold they tempted me*.'

Q. Who tempted you?

A. '*The yellow-hair'd laddy*.'

Q. Did he do it in perſon, or by an agent?

A. '*By all that's great and grand, pretty Maud, pretty Maud,*

'*Golden chain and lilly wand, pretty Maud*,'

Q. What do you mean, Sir? explain yourſelf ſo as to be underſtood?

A.——. *If you mean to hire for Service,*

'*Come with me, you jolly jolly Dog*.'

Q. Did any body elſe tempt you, as you call it?

A. *Maſter Pol, with his tol de rol lol.*'

Q. Who do you mean, Sir? make yourſelf underſtood?

A. *Ah! how ſhall I in language weak.*'

Q. Deſcribe his perſon?

A. '*His bald pate, Jove would cuff, he's ſo bluff,*
for a ſtraw.'

Q. How was he dreſſed?

A. '*Black ſoke, and belly ſo white,*' and

'*If you had but the ſenſe for to ballance a ſtraw,*
You would ſoon take a hint from the picture I draw,

Q. Was any body preſent when you were tempted?

A. *Cock ma Keery. Kitty alone, Kitty alone, and I!*

The Court now called upon the defendant's counſel to go into his caſe if he had any—who refuſed.

1ſt, Becauſe this appeared to be the evidence of an approver, and as ſuch inadmiſſible—until a ground had been laid by the evidence of ſome fair witneſs.

2d. Becauſe this evidence was vague and indirect to be collected entirely by inference and ſurmiſe; and was at beſt, but of a ſecondary, nature.

3d. Becauſe, altho' there may be a libel without writing, as by words, ſigns, or pictures: Yet there is no law to make mere muſical ſounds libellous, and no precedent can be ſhewn for it; and *ubi nulla lex, ibi nulla tranſgreſſio.*

4th. Becauſe the witneſs had confeſſed that he was a French Horn; or as the Court more learnedly

edly expreſſed it, *a Horn of France*: The inevitable inference, according to the Attorney General's own ſtatement, is, that he is an infidel; in which caſe he is competent to give evidence againſt any traverſer whatever.

To which it was anſwered—1ſt, That it is the diſcretion of the Court either to receive the teſtimony of the approver at firſt, or wait till ſome fair and unpolluted evidence has been given: Here the evidence has gone to the jury, and the objection comes too late—no matter whether it is ſtrong, or whether it is weak, if there is a ſingle *ſcintilla*, that *ſcintilla* muſt go to the jury, and they are to judge of the credit of that *ſcintilla*: but *non conſtat*, that this witneſs was an approver, he ſaid no ſuch thing—and it is no objection to a witneſs, that he hath maintenance from the King, 2 State Trials, 334, 535, 691, 693: Alſo, it had been adjudged to be no good exception againſt a witneſs, that he hath received a reward for the diſcovery of a crime, to be proved againſt the priſoner. 1 State Trial, 723, 724. But there were ſome late caſes, where witneſſes were under proſecution for the very offence, and upon the mere drawing on a *noli proſequi* in court, were admitted. And had this objection, if it can be called one, been made in time, a charter of royal pardon could have been obtained, which would reſtore the moſt abandoned and perjured profligate to his competency and credit.

2d. There are many caſes where ſecondary evidence muſt be admitted *ex neceſſitate rei*, as in Lord Audley's caſe, (State Trials, b. 1, fol. 388, 265, 209, 366, Hut. 116. Ruſhworth's Collection, part 2, v. 1, fol. 94, 99.) Although where a man is indicted

for

for a forcible marriage, againſt the purport of 3 Hen. 7; or where either huſband or wife demand ſureties of the peace againſt other: alſo in caſes of rape, or ſuch like. Now the beſt evidence French Horn could give, or the nature of the caſe admit of, was his playing ſeveral muſical paſſages, correſponding with ſeveral known words, phraſes, poetical images or forms of ſpeech, which convey to every plain underſtanding, a clear and unequivocal anſwer to the queſtion aſked; and deaf and dumb perſons have been admitted to give evidence by ſigns: And it would be prepoſterous, if ſuch dangerous offenders ſhould go unpuniſhed, in compliance with ſuch captious and frivolous objections,

3dly. It was admitted that there was no precedent of a conviction, exactly in point—but in ſome inſtances, where precedents could not be found, judges have adverted to the reaſon of the caſe! What then is the reaſon here? This libel is not expreſſed by writing, or by pictures, nor by ſigns, but a mode equally tending to provoke a breach of the peace, and the maxim is—"like reaſon like law;" and indeed this is the moſt dangerous of all libels.

——Quo non præſtantior alter,
Æra ciere viros Martemque accendere cantu.

4thly. The ſtrictneſs of the old notions reſpecting infidelity, is now pretty much relaxed by the liberality of modern judges. A Gentoo may be ſworn according to his ceremonies of his religion, 1 Atk. 21 and 51. A Mahometan upon the Koran, Stra. 1124, 2 Equ. Ca. ab. 397, pl. 15. The teſtimony of a Jew, *tacto libro legis Moſaicæ*, is not

to

to be rejected, Atk. 42, 44, 2 Keb. 314. 6 State Trials, 58. (Francis's Trial for high treason.) A person has been admitted to swear by holding up his hand, Dutton v. Colt. Atk. 42, O. B. And by Wills, Chief Justice, an infidel, in general, is an admissible witness;—and even if it were not so, *French Horn* seems perfectly acquainted with '*God save the King*'—*As it is performed in Church!!!* which is all the religion necessary in the present state of things.

The Court ruled these points for the prosecutor, and told the Counsel on the other side, that if he had any thing to say, he should be heard; otherwise it would proceed to give its charge; Upon which Mr. S—— G—— addressed the Jury as follows:

He began by observing, that the evidence of French Horn, was the most *blasted* testimony he ever had known attempted to be brought forward in any Court of Justice. And that the whole prosecution was of a complexion, at the same time the most "musical and melancholy," that he ever had the misfortune to be concerned with. He lamented that this honourable and dignified Court whose province it was to watch over the morals of the nation, should be made the theatre in which such mock heroics and burlesque tragedies, were to be represented. He felt, however, that the Country had reached that pitch of political delusion, when to reason was to be condemned, and when it was unsafe to oppose any argument to the preconceived opinions of men. There was, as it were, an epidemical fever in the body politic, the symptoms of which were delirium and a horror of every thing new. And there were (he said) a set

of

of licentiate Quacks about the Court, who take all poſſible means of propagating this diſeaſe, on account of the emoluments it brings them; for it reduces their patients to ſuch a ſtate of apathy and imbecility, that with their eyes wide open, they ſuffer theſe deſperado Doctors to pick the money out of their pockets, and to practice every inſult and every mockery upon them: to prevent their awaking from this ſtrange trance, they uſe their artifice, ſo ſucceſsfully practiſed in nurſeries, of droning in their ears, long ſtupid old ſongs about Murder, and France, and United Iriſhmen, and Rogues, and Raparees, and Rawhead and Bloody-bones, by which they inſpire them with immoderate panic, ſo as to increaſe the weakneſs and irratibility of their nerves: And if any of their well wiſhers ſhould but whiſper to them that they are impoſed upon, their lethargy, it is true, forſakes them, but inſtead of turning againſt the impoſtors, they join with them in a loud cry of "innovation, revolution, damnation;" and having ſaid this they ſeem ready to devour their beſt friends. And this diſorder is now as faſhionable as the French P——, and like that chiefly prevails in the firſt circles. Beſides, theſe Quacks have a ſmart ſtud of what they call hacks, conſtantly ſaddled and briddled, like the cavalry of the Arabs; and being furniſhed by correſpondents at all the vicious courts of Europe, with a conſtant ſupply of the moſt virulent infection, they ſcour the Country by means of theſe hacks, and innoculate men, women, and children. And it was remarkable, Mr S——G—— ſaid, that contrary to the progreſs of moſt inflammatory diſtempers, this operates moſt ſtrongly upon the weakeſt ſubjects. It had been calculated, he ſaid, that there were yet three fourths of the community uninfected: if theſe did not ſoon co-operate,

rate, and put the others under ſome wholeſome regimen and ſalutary reſtraint, the moſt melancholy conſequences muſt inevitably follow: And they will owe it to nothing, Gentlemen, but their own want of metal, their bad paces, and the difficulty of fixing a ſaddle to their backs, that they are not, in their turn converted into hacks, without however being fed and pampered, let me tell them, as the preſent race are.

But he was at a loſs upon what principle to account for it, that a grave character, and "the moſt diſcreet man in his Majeſty's councils," and, if you may judge by his words, the honeſteſt man, could come forward on ſo ludicrous an occaſion, and ſtate ſeriouſly, as if from himſelf, the moſt ill-founded and vulgar rumours: ſuch as that of Mount Veſuvius having leagued with this Organ to overturn the conſtitution, and kindle up wars and diſcontents in all quarters of the earth, when it was well known to that gentleman himſelf, that every miſchief in the world has been occaſioned by the NORTHERN STAR—or to go out of his way to miſtate a fact, as that an equilibriſt, who muſt be preſumed a friend to a conſtitution, the eſſence of which is balancing, was put on board a tender, when in fact he never was farther that the watch houſe.

(Here ſome noiſe and altercation took place, of which as it did not ſeem to proceed from any *concerned*, the reporter thinks it would be departing from the dignity of his office to take any notice.)

(Mr.——— then proceeded,)

I know nothing of you perſonally, Gentlemen of the Jury. I know not whether you belong to

the claſs of hacks, of quacks, of patients, or to the ſound part of the community. If to the latter, it will appear by your inſtantaneous acquittal of this defendant. If on the contrary you convict him, it will not be his guilt which your verdict will eſtabliſh, but you will be reduced to this dilemma of proving yourſelves either impoſtors or delirious.

Mr. ——— ——— *in reply.*

My lords and gentlemen of the jury—Much of the public time has been waſted in diſcuſſing captious and frivolous objections on the part of the defendant. I ſhall aſk but two minutes to convince the moſt obdurate and impenetrable amongſt you, beyond all poſſibility of doubt, and that at the hazard of my profeſſional reputation, that nothing which has been ſaid is deſerving of any anſwer, and in doing ſo I ſhall confine myſelf within the compaſs of a nut-ſhell, and argue with the moſt logical preciſion. [Here Mr. S. G. made ſix diviſions and a multitude of ſubdiviſions, of which as he made no further uſe the reporter will make no further mention.] He then deſcanted at great length upon the general nature of libels, (*vide ſeller libel paſſim*) and then obſerved upon the peculiar nature of the libel in queſtion.

And whilſt I adore, ſaid he, the liberty of the preſs, I abhor the licentiouſneſs of it; ſo, in proportion as I delight in 'the concord of ſweet ſounds,' I abhor the inſtrument which could play ſo *baſe a part* as this ſo out of *time*, and out of *tune*. Offences in our law are of two kinds, ſuch as are *mala in ſe*, and ſuch as are merely *poſitivi juris*. Our common law does not operate *pro ſalute animæ*, and therefore

therefore, many offences henious in the sight of God, are practised under it—whilst many which are not so, are punished on account of their tendency to promote *discord*—of this description, is the offence, in question. It will not serve the gentlemen on the other side to say, the evidence of *French Horn* was *blasted*, for that of necessity it must be, for what does Virgil say—

"*Et tuba terribili sonitu taratantara dixit.*"

Mr. S. G. then stated several passages from *Justus Lipsius, de telis atque tormentis*, also from a Latin work, *de Harpeg & Salamandris*. He then said, that mischievous as the proceedings of the democracy were, he could not refrain from laughing at their contemptible absurdity: They reminded him of the proclamation of Jack Cade, the clothier, who professed to dress the common wealth and turn it, and set a new nap upon it—he was to make the three-hooped pot have nine hoops—seven half-penny loaves be sold for a penny—and make it felony to drink small beer—and who complained that the nobility thought scorn to go in leather aprons—such were the gross delusion with which they would misguide the people.

Mr. S. G. next observed, that Mr. Att. Gen. had so far from exaggerating, being very moderate in his statement of the times, he had mentioned nothing of Lord Macartney's reception—how the Emperor of China took all his trinkets, and would neither let him hear nor see any thing, yet charged him to be secret—how the deluded slaves in the islands, would not return, nor be advised to "a life devoted to industry"—how the

Duke of York lamented the fertile plains which he had exchanged for a barren defert——how Pichegru cavalierly invited himſelf to ſpend the remainder of Meſidor in Amſterdam——how Liege and Spires were taken—and Manheim, Mentz and Frankfort about to follow—how in this war, undertaken in defence of our conſtitution and our religion, the Moors were our only dependance. As to the addition of a new kingdom to thoſe of Great-Britain, France and Ireland, and of a fourth eſtate to the conſtitution, they were wiſe meaſures, and done at the ſuggeſtion of the greateſt philoſophers, and conformable to the analogies of nature; as it has been lately diſcovered that no animal (except a horſe, that was formerly ſhewn at Exeter Change, and which is ſince dead) can go or ſtand, for any length of time, upon three legs; and he further illuſtrated this poſition, by the following quotation from Shakeſpear:

—"The fox, the dog, and the humble bee,
Were ſtill at odds, being but three;
Until the gooſe ſtepp'd out of the door,
And ſet them—even, making four."

He added, that this was too dangerous a period to liſten to very nice objections reſpecting witneſſes. There is a ſtory in Pauſanias, of an aſs having ſaved a city by braying: the cackling of geeſe ſaved the capitol—and Cataline's conſpiracy was diſcovered by a whore. (Here he apoligized, and declared he meant nothing perſonal or diſreſpectful to any of their Lordſhips.) Now it might have been objected to theſe evidences, that they were *blaſted*, and abſurd, and polluted.

With

With regard to what had been ſaid of hacks and quacks, and ſaddles on men's backs: however difficult it might be to keep pace with the wit of his learned friend, he hoped the law was not ſo ſlow as not to overtake his client: for

Raro antecedentem ſceleſtem
Deſernit pede pœna claudo.

He rejoiced in the day he had firſt heard the blaſts of this *French Horn*; he was convinced he was the Saviour of this Country, and he was convinced he was the ſame alluded to in theſe prophetic lines:

—"Whoever ſhall this horn blow,
Shall ſoon the Giant overthrow;
And end this black enchantment ſtraight;
So all ſhall be in happy ſtate."

His Lordſhip then charged the Jury, as follows;

Gentlemen of the Jury,

The many learned obſervations which have been made in this cauſe by the gentlemen of the bar, have greatly lightened the taſk which it is incumbent upon perſons in my ſtation. But nevertheleſs, as this is a cauſe of great magnitude, of great public expectation, and of the moſt general importance, I feel the neceſſity of going into it at ſome length; but before I enter into the particulars of it, I ſhall appriſe, and I wiſh you to be fully appriſed and acquainted with a late ſtatute which enacts. (Here his Lordſhip explained the late libel bill, and added, that the jury probably had the right of finding generally guilty or not guilty before; and that this ſtatute was only an expoſition

oppoſition of that right to correct the majority of the judges, who always encroached upon the privileges of the jury, and who were ſtrenuous in their oppoſition to this very act.) and I thing it right to apprife you of the particular nature of the offence charged to have been committed by the traverſer *Hurdy Gurdy*.

It is not neceſſary, gentlemen, to conſtitute a libel, that it ſhould be committed to writing or to printing, it is not eſſential, I ſay, to the nature of the crime. The gift of the offence is, the tendency to diſturb the peace and good order of the ſociety, and to endanger the goverment of the country, and to overturn the conſtitution—and it matters not in what medium the poiſon may have been conveyed, no more than if a man were indicted for poiſoning another with a *quack Medicine*, it would be of any conſequence in what vehicle the doſe might have been infuſed. Not only written or printed ſcandal, gentlemen, comes within the definition of a libel, but likewiſe every other ſpecies of defamation, however expreſſed, whether by writing, printing, ſpeaking, or by ſigns or pictures, or as in this caſe, by mere ſounds: provided it goes to ſcandalize any individual, much more thoſe who have been entruſted by his Majeſty with the adminiſtration of public affairs: and that, whether the aſperſion can be founded in truth or not. Therefore, if any perſon ſhould deſcribe his Majeſty's preſent miniſters with fools caps or aſſes ears; or ſhould exhibit the inſide of their hearts, and ſhew them to be gangrened, or bloated with pride and obſtinacy; or I will put another inſtance, and a very illuſtrious one—a very great man—I will ſuppoſe Mr. Pitt—a very great man—ſuppoſe ſome perſon was, out of miſchief, to preſent a

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ſection of his head, and to ſhew the ſeat of the brain filled with cobwebs, and moon-ſhine, and counter-revolutions, or full of the vapour or fumes ariſing from too much ſtrong Port: Provided, there was a ſufficient reſemblance in the ſign or picture to point out to a plain capacity that which is meant to be expreſſed—I tell you, gentlemen, it is as criminal as if the ſame had been ſet forth upon paper, upon parchment, upon wood, upon cotton, upon linen, or upon ſtone. I remember once myſelf, when I was very young at the bar, to have been extremely ſhocked by the accidental diſcovery of a very libellous repreſentation upon a delft jug; nor would the truth of ſuch a deſcription of the miniſters, be any juſtification of the offence—on the contrary it would be a very aggravating circumſtance: For, as my Lord Coke obſerves, the greateſt appearance of truth there is in any invective, it is the more provoking, and hard to be borne, and therefore more deſerving of puniſhment. 5 Co. 125; Hob. 253; Moore 627; Hawk. pl. 194, Skinner. A Merchant of London ſaid of Manwood, Chief Baron, that he was a corrupt judge; an action lay for ſcandalizing him in his profeſſion, (4 Ed. 6. vide action ſur le caſe, 1121.) There is another caſe in Cro. Ch. 13. When Bulhead ſaid of Stukely, juſtice of the peace, that "Mr. Stukely covereth and hideth felonies, and is not worthy to be a juſtice of the peace," an action lies; for it is againſt his oath, and it is a good cauſe to put him out of the peace, and he ſhould be indicted and fined for it. For what greater ſcandal of government can there be, than to have corrupt or wicked magiſtrates to be appointed or conſtituted by the king, to govern his ſubjects under him? Or what greater imputation can there be, than to ſuffer ſuch corrupt men to

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ſit in the ſacred ſeat of juſtice; or to have any meddling or concerning with the adminiſtration of it. (STRANGE 498.) A great author ſays, in the old books, '*Actiones pro ſcandalis ſunt rariſſimæ*—but they are neceſſary now for example ſake: for '*Malitus, hominum eſt obveandum.*' Thoſe concerned in the adminiſtration of the laws are called upon to exert themſelves in conformity to the laws and conſtitution, to prevent the neceſſity of ſo many proſecutions in future. *Nam boni judicis eſt lites decernare.* There is a caſe in the Star Chamber, reported by my Lord Coke, which may be called the leading caſe upon this ſubject, as containing all the doctrine which has been cheriſhed and improved upon until this preſent hour; and which is emphatically called the caſe *de libellous famoſis* or of ſcandalous libels. This profound author ſets out with the definition of a libel: "Every libel," ſays he, '*aut eſt in ſcriptis, aut ſine ſcriptis*', either it is in writing, or not in writing, (that which you are now trying, is of the latter deſcription, your own *good ſenſe* will ſuggeſt that to you.) A ſcandalous libel *in ſcriptis*, is when an epigram, rhyme, or other writing, is compoſed to the ſcandal or contumely of another, by which his fame or dignity may be prejudiced. 1ſt. *Verbis aut cantilenis*, as when it is maliciouſly ſung or repeated in the preſence of others. 2d. *Traditione*, as when the libel or any copy of it, is delivered over to ſcandalize the party. 1ſt. *Picturis*, as to Paint the party in any ſhameful or ignominious manner. 2d. *Signis*, as to fix a gallows or other reproachful or ignominious ſign, at the party's door or elſewhere; and libelling or calumny is an offence againſt the law of God: For Leviticus 17, (you know your Bibles, gentlemen, perhaps as well as I do) *in Leviticus* 17, it is ſaid, *Non facias calumniam proximi*: And *Exodus* 22. & 28.

& 28. *Principi populi tui non maledice* :—And *Eccleſiaſticus* 10, *In cogitatione tua ne detractas regi, nec in ſecreto cubiculi tui diviti maledices quia volucres cæli portabunt vocem tuam, & qui habet pennas enuntiabit ſententiam.* *Pſalm* 68, 13. *Adverſus me loquebantur qui ſedebant in porta, et in me pſallebant qui bibebant vinum.* *Job* 30, v. 7 and 8, *Filii ſtultorum et ignobilium et in terra penitus non parentes nunc in eorum canticum verſus ſum et factus ſum eis in proverbium.* And it was obſerved that Job who was the mirror of patience, as appears by his words, became *quodammodo*, impatient, what libels were made of him: and therefore it appears of what force they are to provoke impatience and contention. And there are certain marks by which a libeller may be known; *quia tria ſequuntur defamatorem famoſum.* 1ſt. *Pravitatis incrementum*, increaſe of lewdneſs. 2d. *Burſæ decrementum*, decreaſe of money and beggary. 3d. *Conſcientiæ detrimentum*, the ſhip-wreck, of conſcience I have quoted this caſe at length in the words of the reporter; becauſe, I think it of high importance that the law upon this ſubject, and the principles of it, ſhould be well underſtood.

Having diſpoſed of ſo much I ſhall now make a few remarks on the particular publication in queſtion. The charge in the indictment is—that the traverſer Hurdy Gurdy, did publiſh this *ærial pulſe*, which is called *Ca Ira*. As to the 93 counts, they are ſo many different ways of ſaying the ſame thing; why there are ſo many of them, I do not at this late hour, attempt to explain. It has been well obſerved by Mr. Attorney General, that it is the nature of our criminal law to be not eaſily underſtood, although infinitely more ſimple than our civil code. But it is not neceſſary that you ſhould underſtand the formal part of it; this ap-

pears from the ſtyle of the record, which ſays—Be it remembered, that A. B. gives the court (☞ And not the jury obſerve) to underſtand which ſhews, that that which is called an information is not meant to *your* information. Why it conſiſts of ſo many counts, or different ways of relating the ſame thing, and is yet unintelligible to you, at leaſt in proportion as it is tedious—and why being on twenty ſkins of parchment, it is twenty times more difficult to comprehend, than if it was in one, and a hundred times more ſo, than if it was in the hundereth part of one, is a myſtery which I am glad I am not called upon to explain; or what the meaning of the word *count* is, it being greatly changed from its original acceptance. But if amongſt all theſe counts, there is one to which the evidence applies, it is enough.

Now, gentlemen, there is one count more general than all the reſt; that is the 76th, (Here his Lordſhip was let right by one of his brethren, who ſaid it was the 67th) which ſtates, that Hurdy Gurdy did, on ſuch a day, at —— —— with force and arms, publiſh a ſcandalous, wicked and ſeditious libel, or, as I have termed it before, an *evil purſe*, tending to overturn the conſtitution, and bring the King into contempt and ridicule. If you believe it is ſupported by the evidence which has been given, you will find guilty upon that count—which being general, implies all the reſt: For if he publiſhed particularly, he publiſhed generally, of courſe; and therefore all the others are unneceſſary.

I ſhall now, gentlemen, as I am called upon to do, by the law, particularly by the late act of parliament, give you my opinion as to the libel itſelf:

itſelf, and I will not heſitate to ſay that it is one of the moſt flagitious expreſſions of diſloyalty and diſaffection—one of the moſt dangerous attempts to provoke and excite the people to the acts of force and violence, and to overturn the conſtitution and to promote anarchy and rebellion, I will not ſcruple to ſay, the moſt ſo that ever I have known. The whole of the information, which is ſpread over twenty ſkins of parchment, and branched out into ninety three counts, amounts to neither more or leſs than this, as I have ſaid before, *viz.* that *Hurdy Gurdy* played *Ca Ira*. Now I put to you as loyal ſubjects, as men attached to your happy conſtitution, as men of *ſenſe* and of religion, what does this mean? It begins with *Ah ha!* what is the meaning of this *Ah ha?* It is not the expreſſion of inſult and ridicule, a challenge or a provocation ſuch as is commonly called a horſe laugh; (here his Lordſhip laughed) then comes the direct and imprudent aſſertion *Ca Ira—that will go!* what will go? Here gentlemen, I ſhall add another direction to thoſe I have already given you—that is, that you are, by the conſtitution, to judge of the innuendos, whether they are or are not properly filled up. The innuendo here is, CA IRA! Anglice—That will go! (meaning that the King and Conſtitution in church and ſtate, will go, or be deſtroyed.) I am clear that this is the true and only meaning of the expreſſion CA IRA! or —that will go! What elſe is it that he ſays will go? *Has he given any evidence of a contrary meaning?* Has he given any evidence to convince you, that he meant that any thing bad ſhould go, and any thing good come into its place? Then can you ſuppoſe he had any good meaning, is it probable or poſſible? *Certainly not*; at leaſt I think not—but of that you are to judge—I think it was ſay-

ing in terms—if not in words—Ah ha! your King ſhall go a packing—your church and your religion ſhall go a begging—and your conſtitution ſhall go to pieces. And what would this fanatic inſtrument ſubſtitute in the place of what it would deſtroy—Any thing good or uſeful to humanity? No. But I will tell you what it would ſubſtitute; it would ſubſtitute maſſacres and tyranny, and miſchievous ambition, and democracy, and diſcord, and malignity, and arrogance: Therefore I am of opinion, that it deſerves the epithets which are given to it; but upon that you will decide,

But a great deal of the witneſſe's teſtimony has gone, as I take it, to prove the intention and deſign of this inſtrument, by ſhewing what his habits and practices were; and what tunes he was accuſtomed to perform through the public ſtreets of this metropolis. Much will depend upon the credit you give to the witneſs. I ſhall therefore ſtate to you what his evidence was, as I have taken it down: if it agrees with your *notes* it is well, if not, or the Counſel on one ſide or the other conceive that I have miſtaken any part of it, I am very willing to be ſet right; but let me firſt obſerve to you, that altho' this evidence is not quite the ſame as if it had been delivered in unequivocal words, yet being the beſt that from the nature of the caſe could be given, it is admiſſible. The objection if any goes to the credit, and not to the competency; and of that credit you are the excluſive Judges. Strong obſervations have been made by the Defendant's Counſel, who ſtated it to be the moſt *blaſted* teſtimony he had ever heard. However the anſwer to that is, that it was open to the Defendant to have given contradictory

dictory teſtimony to impeach it, and this he has not done.

The witneſs when aſked what his name was anſwered French Horn. I aſked him whether he was a Horn of France, or whether his name was French Horn? He anſwered by playing the beginning of an air the words of which are "Oh Yes! Oh Yes! Oh Yes!" I repeated the queſtion whether he was a French Horn, and he anſwered "My native land I bade adieu," which I take it was as much as to ſay that he had come from that unhappy country. I paſs by the objection of Mr. ——— as already diſpoſed of, *viz.* that the witneſs might criminate himſelf by anſwering that queſtion. The witneſs further anſwered to this queſtion "Titty fol lol, I am a French Gentleman lately come from France, me pick up von Engliſh Lady and ſhe ſhew me von Engliſh dance." This ſeems rather to relate to the witneſs's own private affairs and is not material to the iſſue, and therefore I ſhall make no comment upon it. He was then aſked did he know the Traverſer *Hurdy Gurdy?* his anſwer was "Oh Yes! Oh Yes! the crier ſaid and jumped acroſs the table." (I know not where ſuch a thing did happen, nor what place he alludes to; I only ſay that if the crier of this court was to do ſuch an indecent thing he ſhould have ſomething to *try* for.) He alſo ſaid he had known him from his infancy; had firſt got acquainted with him in ſome diſtant part, "Over the Hills and far away." Had known him "many a year." Had often heard him play in the ſtreets as they (meaning as I underſtand it, himſelf and the Traverſer) had ſtrayed "up and down through" (as he called it) "this gay town." I fear, Gentlemen, had theſe inſtruments ſucceeded in their

deſign

deſigns, there would have been little gaiety amongſt us. He then pointed out ſeveral days which are the ſame counted upon the information. "Patrick's Day" and "the Firſt of May," and "Valentine's day." He was aſked, what tunes he heard the Traverſer play, and anſwered "Go George, I can't endure you!" Gentlemen, it requires no refinement or ſubtlety of underſtanding to perceive the meaning inſidiouſly meant to be conveyed by this air. But it is fully explained by the next part of the witneſs's teſtimony, that he alſo played "The Modes of the Court." What had he to do with the Court or its Modes, unleſs to gratify his malice, by bringing into vulgar odium and contempt all that amongſt civilized nations has conſtantly been treated with reſpect. He (the witneſs) then ſaid that on "July the firſt," Or on "the firſt or the laſt of Auguſt," he played the "Duke of York's march," "the Retreat," "the Coldſtream," and "Over the Water." I aſk you, could this have been for any good or for any innocent purpoſes. Certainly not. It could have been for no other than to ſtab the military honour of the Royal perſon alluded to, and to aſſaſſinate the reputation of Miniſters, already wounded paſt all cure. Was there any thing on the firſt of Auguſt to make any good ſubject merry? Certainly not. He does not, however, ſtop here. He riſes as it were by ſteps to the ſummit of enormity, and proclaims through the ſtreets, and to the world at large, that "Let the King do all he can he is no more than man." Gentlemen, this is a degree of licentiouſneſs not to be endured in any well-ordered community; it is as if he had addreſſed the rabble in thoſe words; The King is a man, let him do all he can he is no more. You are men likewiſe, then why ſhould he be above you?

you? Why ſhould you not put him down, and get upon the top of him: are not all men equal? and he has had his turn. Do you now take yours and govern him as he governed you. He alſo, if you believe the witneſs, played the "Volunteers March." Was this for a good purpoſe? or was it to call upon thoſe *Iriſh Volunteers* who, in better times, ſuffered themſelves to be controuled and were ſubſervient to Men of Quality and condition? Certainly not. It was a direct beating to arms for thoſe, whom for their departure from their original principles, and their diſreſpect to high characters and priviledged orders, the Government of *that* Country, acting always under the guidance of his Majeſty's firſt Miniſter, wiſely and happily for the peace of all his Majeſty's dominions, put down by a well timed and well-worded proclamation. He alſo played the "White Cockade." Was this for the purpoſe of bringing in a Pretender and eſtabliſhing Popery, wooden ſhoes and braſs money! I do not go ſo far as to ſay it was: I rather think it was for purpoſes of Jacobiniſm than of Jacobitiſm: by the Conſtitution you are to judge of that. It is a ſtrong point in the cauſe however, that the Traverſer has given no evidence on the contrary. The next was "Rouſe Hibernia! Rouſe from your trances," and "A whack of Shilelagh." What Trances, Gentlemen, do they mean and what Whack of Shilelagh? I will tell you how it ſtrikes my mind; you will be however judges for yourſelves. It is thus; rouſe from the peaceful and happy tranquility which you have enjoyed ſo long; and ſince the Convention bill prevents you getting more dangerous weapons, take each a bludgeon in his hand to beat the brains out of ſuch as have brains, which you yourſelves have not; and to rob every man who happens to be better or

more

more wealthy than yourſelves: ſpare neither age nor ſex; deſtroy every thing. Then follows "Proteſtant Boys." Does he mean to bring the Proteſtant Religion into contempt, by calling thoſe who profeſs it boys and children. It is a childiſh religion then it ſeems. It is puerile and unmanly; and only fit to amuſe boys and girls. It is too ridiculous to be profeſſed by growing people. Is this to be tolerated in any country where that religion is eſtabliſhed by the law? In his Majeſty's new kingdom of Corſica, where he is ſworn to defend the Popiſh religion, it might be otherwiſe: here he is defender of the faith; that is, the Proteſtant faith. Is this then to be tolerated? Certainly not, I think it is an indirect and treacherous attempt to ſtir up the Roman Catholics of the ſiſtler Kingdom; to excite them to murmur, and to render them diſcontented with all that the beneficence, of their King and the wiſdom and goodneſs of his Parliament have done for them. And then "I'll follow my own Vagary." What is his Vagary? Why if we may judge from the reſt of his behaviour his Vagary is this—I will be reſtrained by no laws, no religion, I will follow no induſtry, I will be a gentleman at large—I will foment Sedition and Rebellion, that I may take advantage of the troubles I have brought upon my country, ſo as to advance myſelf to ſome ſituation, or to rob and plunder with impunity: that's *his* Vagary. Then comes that Jacobin and Fanatic air which is charged in the information, which is the principle offence, and to which all the others are incidental; therefore unleſs you are of opinion that he did play that air and alſo that it is a libel, all the reſt is to be thrown out of your conſideration. Now that he did play it, you have the evidence of French Horn uncontradicted by any

other

other witneſs. And here an obſervation is ſuggeſted to me by one of my brethern, that may ſerve in ſome degree to guide your judgment as to the queſtion, libel or not. Not very long ago, in a neighbouring Kingdom, one Thomas Muir was tried for ſeditious practices, or as it called there leaſing making; he was convicted, in conſequence of which he was put on board the hulks, had his head ſhaved, and was tranſported, together with the convict felons, for 14 years. Now, gentlemen, the cauſing another to play this very air was a ſubſtantive integral part of the evidence given againſt him. Therefore it does not appear but that it was upon the ſtrength of this very fact that he was found guilty; and if he was found guilty for merely cauſing it to be played, the caſe of Hurdy Gurdy is certainly ſtronger, who played it, if you believe the witneſs, of his own *accord*. But God forbid that you ſhould conceive yourſelves implicitly bound to follow that authority. It is never to be forgot that that caſe was decided by a law foreign to this Country. I only mention it as a circumſtance to ſhew you what opinions other countries have entertained of the dangerous tendency of this tune. It is the tendency of any publication which makes it libellous; and I do not know of any libel that can have a more dangerous tendency than a *muſical* libel ſuch as this. So much however has been ſaid by Counſel, that I ſhall juſt mention one inſtance where this poſition was well illuſtrated. It was in the 16th Century, and is related by Mr. Walker in his Hiſtorical Memoirs of the Iriſh Bards. "*A race of Rhapſodiſts who were ſo expert in ſatire and invective that they held the nobles in much awe, and gifts were occaſionally beſtowed on them to keep their muſe in good humour.* The Harp was their favourite inſtrument, and the influence of their

Rhymes was aſtoniſhing. When the Earl of Kildare was ſummoned by King Henry the 8th of England to anſwer certain charges brought againſt him, he entruſted the adminiſtration to his ſon Lord Thomas. A rumour, ſoon after the Earl's departure, being ſpread that he had been executed in the Tower, and that his whole family were threatned with royal vengeance, this raſh young man, by the advice of his aſſociates, determined on revenging the injuries of his family. While Cranmer, who was both Primate and Chancellor, was pathetically repreſenting to him the raſhneſs, weakneſs, and iniquity of his intended enterprize, in a Counſel aſſembled at St. Mary's Abbey. (Dublin) Nelan, a bard who waited in his train, inſtantly began to chaunt forth the praiſes of Lord Thomas, in his Country Rhymes, ; extolling his greatneſs, chiding his delay, and calling upon him to take inſtant vengeance. The effuſion of this ignorant and heated fanatic, had unhappily a greater influence than the ſage counſel of the Prelate, and the Young Geraldine ruſhed forth at the head of his Iriſh train." Now this Nelan's powers lay not merely in perſuaſion, (adds the author) *he was a jeſter too!!!* This ſeems to me Gentlemen to be a caſe in point. The witneſs (French Horn) on his croſs-examination, was aſked if he had ever heard the Traverſer play any very loyal tunes, and he anſwered that he had, and mentioned "God ſave Great George," and "Rule Britannia." This was I apprehend with a view of ſhewing the Traverſer was not at all times ſeditious; but, Gentlemen, this is no juſtification nor excuſe. It is not neceſſary that every action of the accuſed ſhould be a libel; if ſo the moſt miſchievous perſon or thing that is, would find ſome means of evading juſtice. With reſpect to the

tune

tune of "Sovereigns of the Sea," I take it to be a bitter and biting ſneer at the unprotected ſtate of our Trade: but you are to judge of that as your good ſenſe ſhall direct you. He then ſaid, he had parted with his companion for want of money, and that he had been tempted with gold. This is ſo far from being an objection to the witneſs's credit ſeems to me to carry every appearance of truth. He ſaid he was tempted by the "Yellow Haired Laddy." It is not eaſy, when wigs are ſo generally worn, to who he meant by the Yellow Haired Laddy. He then ſaid, he was tempted by the intervention of an agent, and intimated ſomething about a "golden chain." and a "wand," and a "jolly *dog*." It would appear that this perſon, whoever he was, whom he calls a DOG, muſt have been IN ſome OFFICE, ſuch as that of a Sheriff, which is diſtinguiſhed by a gold chain and a wand. He was aſked who elſe tempted him? and anſwered 'Maſter POLL, with his tol de rol.' When aſked to deſcribe his perſon, he anſwered, 'His *bald* pate Jove would cuff, he's ſo bluff, for a ſtraw,' which ſeems to allude to ſome perſon who is a little bald, and ſomewhat bluff; and when aſked about his dreſs, he anſwered, 'Black joke and belly ſo white;' alluding, as I ſuppoſe to his wearing a black breeches, and a white waiſtcoat. You will judge of this evidence, and give it what weight it deſerves; it does not however, ſtrike me as at all material. I have now fulfilled my duty to the beſt of my abilities. I ſhall conclude by ſhortly—— I had almoſt forgot the laſt queſtion which was put to the witneſs, whether any perſon was preſent when he was tempted; His anſwer was, as I have taken it down, 'Cock ma Keery, Kitty alone, Kitty alone and I." But as this Cock ma Keery, or Kitty ma Keery, or whoever ſhe was, has not been

produced, I conceive this anſwer to be totally immaterial. If, therefore, gentlemen, you believe the evidence, that this Traverſer did play or publiſh the tune of CA IRA! that he did it, knowing its meaning and tendency, and not by miſtake or ignorance, and of that you have ample evidence; beſides, that the meaning, if neceſſary, may be clearly collected from the tune itſelf, ariſing upon the *face* of it; for it is but giving *Gurdy* credit for underſtanding his own acts—and it is immaterial whether his intention was to obtain a Reform in Parliament, or a redreſs of grievances, provided his muſic went to ſtimulate the people to arms. The law will imply that his intention was ſeditious. If you believe this, you will find him guilty. If on the contrary, you do not believe this, you will find him not guilty. [Here the words not guilty, ſeemed to be repeated from the outſide of the Court, upon which, his Lordſhip deſired the OFFICER to take the perſon who repeated his words, into cuſtody.] *I will not*, added his Lordſhip, *have my words repeated.* The officer came into Court, and returned *inſtanter* and *ore tenus*, *non eſt inventus*: [Here his Lordſhip threatned to fine the officer, who went out to make a further ſearch, and ordered the *guard* to prime and load!—when a gentleman of the bar diſcovered it to be ——*an Echo!*

Per curiam. Let Echo then be taken into cuſtody! The officer then returned *capi corpus*: and a warrant being made out, and ſigned by his Lordſhip, Echo was conducted to Newgate under an eſcort of heavy horſe, a battalion of infantry, and a detachment of the Royal Iriſh Artillery; where ſhe continues, by repeating all ſhe hears, to be of great ſervice to the government, and to bring to light many dangerous plots and conſpiracies.

The

The Jury without any deliberation, gave in their verdict, GUILTY.

His Lordſhip, after the cauſe was over, related to the gentlemen of the bar, and the audience, ſtories reſpecting Echos: particularly that of Woodſtock which returns ſeventeen ſyllables in the day, and twenty in the night: and explained the difference between the Centrumphonicum and the Centrumpheno-Campticum. He alſo mentioned a remarkable Echo on the banks of the Naha, between Coblentz and Bingad.

This day, in purſuance of the four day rule, *Hurdy Gurdy* was put to the bar to receive ſentence. Several affidavits were read in aggravation on the part of the Crown, ſtating that during his confinement, ſubſequent to his conviction, he had behaved in a moſt diſorderly manner, and played the moſt diſreſpectful and opprobrious tunes, againſt the King, Conſtitution, the Church, and the Law; and levelled many perſonal invectives againſt the Judges, the Jury, and the witneſs:—That he had, in ſpite of all that could be done to reſtrain him, ranted and raved in ſuch a manner as to bring a great gang of his accomplices (the rabble) about the priſon doors—and had ſo enflamed them with his muſic that they would in all probability have proceeded to reſcue him by force, if Mr. Sheriff ——— had not critically arrived at the head of a large body of the CITY WATCH, aſſiſted by the picket guard, and put a ſtop to the riots.

[N. B. It is much to be lamented that the city Militia did not arrive in time to ſhare the honours of the day!!!

The

The Counſel for the Traverſer being aſked whether he had any thing to offer in migitation, ſaid that he had no inſtructions, nor no deſire in ſo extraordinary a caſe to add any thing to what he had already ſaid: But an affidavit was tendered to the officer by *Gurdy* himſelf, which was read as follows:

Rex, v. Hurdy Gurdy, ——— } *Hurdy Gurdy*, the defendant in this caſe, maketh oath and faith, that ſince the trial had on——— ——laſt, in this caſe, and ſince he hath been pronounced guilty, by the verdict of a jury impannelled and ſworn on his trial: that deponent is more and more, and more convinced of the truth of his opinions, and alſo of the corruption and rottenneſs of the *ſtate*; that ſaid deponent verily believes that the proſecution commenced againſt him, was for purpoſes of revenge and crooked policy, and not of juſtice, or for the ſake of public example; and deponent further underſtands and believes, that if it had for the ſake of example, he would have been tried ſpeedily, and in the county where the offence was committed and would not have been harraſſed with an infinite number of informations and charges, and with ſuch an infinity of ſenſeleſs counts, which deponent further ſaith, occaſions him to bluſh for thoſe who could have debaſed themſelves by ſuch mean jabber: And this deponent further ſaith, that from the inſide of his barrel he doth pity the county where ſuch things are tranſacted under public authority; and this deponent further ſaith, and verily believes, that it was for fear of the honeſty which prevails in his own county, and for no other purpoſe whatever, that ſo many juries were brought up to the bar of this court; and deponent further

further ſaith, that he diſregards all ſuch machinations and contrivances; thar he never regretted the want of a head ſo much as this day; that he, (this deponent) might have come into this court with a bonnet rouge, (*Anglice*, *Red Night-Cap*) Nevertheleſs, he this deponent rejoices, inaſmuch as he hath no neck for the pillory, neither had this deponent any hands upon which his enemies can affix thumb-ſcrews; nor hath he, this deponent, utterly diſregarded the ſame, inaſmuch as he hath never treaſured up money, nor hath any regard therefore, otherwiſe than as the means of *doing good*; which deponent verily believeth this his perſecution will ſpeedily accompliſh. With reſpect to impriſonment, deponent holdeth and verily believeth, that the free ſoul can not be impriſoned; and as to whipping or flogging, his, this deponent's back, is made of a good maple tree, and hurleth defiance at the taws; and this deponent further ſaith, that ſo long as a peg ſhall be left in his barrel, he ſhall never in any wiſe *change his tunes*—but continue to play ſuch *free airs* as heretofore he hath been accuſtomed to play, in honour of LIBERTY, and in furtherance of the RIGHTS OF MAN!!! And further deponent ſaith and verily believeth, that altho' his perſecutors, have made frequent uſe and repetition of the word *conſtitution*, it is a phraſe which conveys as little meaning to them as it does to this deponent; and that notwithſtanding all that has been ſaid of our religion, deponent verily believes his enemies are utterly unacquainted with the tenth verſe of the ſecond pſalm—"Be wiſe, Oh ye Kings, be inſtructed, Oh ye judges of the earth." And this deponent will anſwer them—"The Kings of the earth have gathered together, and have taken counſel againſt me, but in the name of the Lord will I deſtroy them.

HURDY GURDY Sworn. &c.

Here the Court conferred at great length, and his Lordſhip addreſſed the traverſer as follows:

Hurdy Gurdy, you have been found guilty of a very grievous miſdemeanour, by a verdict of twelve men from that county ſo juſtly celebrated for its incorruptible Juries. I ſhall not enter into any repetition of the enormity of your offence, I ſhall only obſerve that ſo far from ſeeming contrite or in any degree corrected by the *deliberate* and ſolemn opinion of twelve of your *peers*, given in and out of Court, both *before* and after your trial, you have triumphed and exulted in the confirmation of your wickedneſs. Your conduct ſince your conviction, and your improper proceedings in the face of this Court, have made it neceſſary to bend the whole force of the law againſt you, in order, if not to amend your courſes, at leaſt to prevent others from following them. That conſtitution and that law which you have vilified has nevertheleſs afforded to you a patient and favourable hearing: your ſcurrilous affidavit has been this day impatiently heard. Hurdy Gurdy, you have had a fair and impartial trial, and you have been ably defended by your Counſel, but your own indecent conduct has made it neceſſary for this court to pronounce a heavier ſentence than was at firſt intended. It is the principal duty of this court and its officers to take care that the conſtitution be not overthrown by ſuch as you. According to the uſual practice my brother the elder Puiſne will deliver the ſentence.

THE END.